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Subject: CEQ-NEPA comments

Attached are Alaska Forest Association's comments for the Council on Environmental



Quality-NEPA Task Force CEQ-NEPA comments 9-23-02.doc

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Council on Environmental Quality
NEPA Task Force

Thank you for the opportunity to comment about needed revisions to the NEPA process. This is a critical issue here in Alaska. Our Land Management Plan proposes development on only a tiny percentage of the forest, and yet the anti-development zealots have successfully paralyzed the Forest Service timber sale program through appeals and lawsuits. Currently they are snickering all the way to the bank as they collect hundreds of thousands of dollars of "equal-access-to-justice" funds after convincing a judge that Alaska needs further wilderness studies. Our timber industry has been decimated and the last 10% is in jeopardy of collapse while "process gridlock" continues unabated.

We have the following suggestions for your task force:

1. NEPA

- CEQ regulations call for programmatic NEPA on "plans". This requirement is redundant because each project must have its own individual NEPA process. Apparently only DOE and USFS follow this regulation religiously. Other agencies allegedly ignore the requirement. It would save the USFS an estimated \$50 million or more annually if the USFS didn't have to perform NEPA on Forest Plan amendments and revisions. *We recommend the Forest Service Planning regulations be changed to eliminate the requirement to prepare NEPA documents for Forest Plan revisions or amendments.*
- *The CEQ should also give the USFS greater authority to use categorical exclusions (Ces) for maintenance activities and simple special use permits. The Forest Service should issue revised policies allowing for use of CEs for small timber sales and other projects.*
- *The Forest Service should also streamline it's internal procedures and manage it's own personnel effectively to avoid unnecessary delays.*

2. **ESA.** This law was designed to protect species, biodiversity and ecosystem integrity. These values were poorly understood when the law was passed and the courts have not clarified much during implementation of the law. The law should be revised to achieve its goals in a reasonable and efficient manner. The recent book entitled "Endangered Species Act Law, Policy and Perspectives" suggests the following reforms:
 - Much of the gridlock problems arise from the **Section 7 Consultation Process** whereby the federal land management agencies review their plans with FWS to insure there is no "**incidental take**" caused by the planned activity. *A more effective and reasonable process for resolving these "incidental take" issues should be established.*
 - Further streamlining could occur by letting land management agencies do their own biological evaluations and have FWS and NMFS have a monitoring and evaluation responsibility only.
 - There is no directive to guide the FWS in endangered species listing decisions. Consequently "the agency routinely renders unreliable decisions with no basis in fact or law." *ESA should be designed to protect only those species that are genuinely in danger of extinction.*
 - The agency makes it's listing decisions upon the vague undefined direction to use "best scientific or commercial data available". *The listings should be based on clear direction that "evaluates the status of a species throughout its range to ensure that the decision to list a species is truly warranted."*
 - The FWS should give priority to listing distinct species. *Protection of subspecies or population segments should be accorded only when the species is threatened.*
 - "Currently the FWS randomly selects a single point in time to set the baseline habitat and compares that to current habitat. Nothing compels the agency to make a reasoned explanation of the year it selects as the baseline for its listing decisions." *The FWS should establish reasonable guidelines for estimating the historical distribution and habitat for a species and for designation "Critical Habitat".*
 - If ESA must remain as is, then we could streamline it by having programmatic consultation instead of project-by-project consultation. (i.e. a best management practices approach rather than project specific terms and conditions) This approach may also require changes in NEPA as well.

3. **Forest Service Appeals Process.** Some improvements that would alleviate gridlock in the current appeals process include:
 - *The automatic stay that is in the current process encourages frivolous appeals and should be removed.*
 - *Limit appeal rights to those who have commented in writing on each specific issue that is to be appealed.* Otherwise, some appellants will simply keep raising new issues in order to either delay or otherwise disrupt the process.

- *Provide deadlines for appeal decisions and include a provision that if the decision is not rendered within the prescribed time, the appellant must file suit immediately.* This will also help limit the use of the appeals process simply for delay.
- *Require the agencies to consider and balance environmental and economic issues when deciding whether to issue a stay during an appeal.*
- *Establish significant fees for Freedom of Information requests to discourage frivolous requests.* This will help discourage appellants from “fishing” for issues to appeal.

4. Forest Service Planning Rule

- We agree with many elements of Senator Larry Craig’s draft bill “Public Lands Planning and Management Improvement Act of 2002” including:
 - ✓ *Limiting the number of federal land planning exercises.*
 - ✓ *Eliminating redundant analysis.*
 - ✓ *Limiting the scope of resource management plans to basic elements and directing the agencies to give equal preference to each of those elements.*
 - ✓ *Establishing strict deadlines for completing resource management planning*
 - ✓ *Clarifying that management activities are not to be stayed in anticipation of changes that might be made in an amendment or revision.*
- The viability or sustainability requirements the agency has developed since the 1982-planning rule probably causes more than half the total cost and delay and exposure to litigation when doing programmatic planning. *The USFS needs to rework its process for viability and the related “well-distributed populations” issue.*

5. Forest Service Management Procedures.

- The Forest Service must take more responsibility for achieving results rather than simply rigorously following procedures. In the new Forest Service Report, the agency says that it has changed from “protecting resources to policing policies.” The Forest Service states that planning and assessment consume 40% of the total direct work at the national forest level and represents an expenditure of more than \$250 million per year. Often resource specialists and Interdisciplinary Teams are managing the process. Unwilling to accept their advisory role, these specialists make decisions on which resources get studied and how much effort and time the studies get. The Line Officers are too timid or unmotivated to take charge, thus much effort and time is spent on “studies” rather than focusing on the fundamentals of NEPA such as issue identification, addressing those issues and examining the basic feasibility of the projects and alternatives.

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Good luck on your project. If you make improvements in this dysfunctional process soon enough we may be able to save what's left of our industry in Alaska.

Sincerely,

Owen J. Graham
Executive Director

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